

CWP-14047-2016

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2023:PHHC:118198

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-14047-2016

Date of decision : 05.09.2023

Tarsem Lal

...Petitioner

Vs.

**Punjab State Power Co-Op Ltd.
Patiala and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Munish Puri, Advocate
for the petitioner.

Mr. R.L.Sharma, Advocate
for the respondents.

DEEPAK MANCHANDA, J.

1. By filing the present writ petition under Article 226/227 Constitution of India, petitioner seeks issuance of a writ in the nature of certiorari for quashing the order bearing No.71 dated 21.04.2016 (Annexure P-17), whereby request of the petitioner for promotion to the post of Assistant Lineman from 26.05.2011 or 23.09.2011, the day vide which similarly situated employees at the post of Regular T-Mate were granted such promotion to the post of Assistant Lineman was rejected. Further, prayer is for directing the respondents to revise the salary, allowances and other benefits w.e.f. 26.05.2011 or 23.09.2011 with arrears with interest @ 18 % per annum till date.

2. Learned counsel for the petitioner submits that the petitioner, who

was working on daily wages, become Work Charge T-Mate on 14.02.1989 and thereafter as a Regular T-Mate on 01.07.1998. In the year 2010, the respondents called details of the Work Charge category and R.T.M. employees, who worked w.e.f. 01.01.1996 till 31.12.1998 for the promotion to the post of Assistant Lineman. In the said list, petitioner was placed at S.No.4 as he was fulfilling the necessary conditions. But, vide office orders dated 26.05.2011 and 23.09.2011, employees working w.e.f. 31.12.2000 were promoted to the post of Assistant Lineman and name of the petitioner was not mentioned in the list. Aggrieved against the same, petitioner moved representation dated 21.07.2015 seeking parity alongwith the other Regular T-Mates, who were promoted on 26.05.2011 and 23.09.2011. Upon enquiry, he came to know that respondent/department mistakenly counted petitioner's option as non-consent which was given by another person, namely, Tarsem Lal s/o Rellu Ram, who was working under Mechanical Maintenance Cell. He further submits that petitioner approached this Court through petition bearing CWP-26882-2015 which was disposed of vide order dated 22.12.2015 (Annexure P-14) with a direction to the competent authority to expeditiously decide the representation dated 21.08.2015 (Annexure P-8 therein) by passing a speaking order, preferably within a period of four months. Acting upon the same, petitioner has been promoted as Assistant Lineman w.e.f.14.03.2016 instead of from the date when the other similarly situated persons were promoted i.e.26.05.2011 and 23.09.2011.

3. Learned counsel for the petitioner has drawn the attention of this Court to Annexures P-15 and P-16, i.e. the representations moved by the petitioner for grant of promotion and arrears/other benefits w.e.f. 23.09.2011,

however, the same was dismissed vide order dated 21.04.2016 (Annexure P-17). He further contends that the principle of 'no work, no pay' would not be attracted as the authority was at fault in not considering the case of the petitioner for promotion and not allowing to work on the promotion post.

4. *Per contra*, counsel for the respondent pleaded that claim of the petition for considering his promotion with effect from 23.9.2011 was not accepted as petitioner gave option on 5.2.2016 to be promoted as ALM, which was received before the competent authority and accordingly the petitioner was promoted on 14.3.2016. Further it is submitted that the petitioner is not entitled for promotion from 26.5.2011 and 23.9.2011 as he did not work for that period and on the settled principle of 'No work, No pay' he is not entitled to get paid as ALM with effect from 26.05.2011 or 23.09.2011.

5. I have heard learned counsel for the parties and have perused the material available on record.

6. Admittedly, the plea raised by the petitioner seems to be genuine where he has been denied promotion due to the reason that non-consent of one other Tarsem Lal, Regular T-Mate son of Relu Ram who was working under Mechanical Maintenance Cell (MMC) was treated as non-consent of the petitioner, who is working with different Department, i.e. under AEE/S&T(Department). A perusal of Annexures P-8 to P-11 also shows that the aforesaid fact was also endorsed by the Department while communicating and mailing recommendations in favour of petitioner for promoting him to the same post and nowhere in the reply filed by respondents, the claim of the petitioner has been denied. It is only when petitioner approached this Court by filing CWP No.26882 of 2015, which was disposed of vide order dated

22.12.2015, wherein directions were issued to the respondent(s) to decide petitioner's claim in a time bound manner and in compliance of the same respondents promoted the petitioner w.e.f. 14.03.2016. Further, while passing the impugned order, respondents did not appreciate that petitioner is running from pillar to post and his plea for promotion was wrongly rejected on the premise that the non-consent of another employee by the name of Tarsem Lal was considered as his non-consent, even the communications of the respondent/department reveals that the petitioner continuously made efforts since the year 2011, but still his prayer for promotion was not considered. Now, respondent-corporation by taking a plea of 'no work, no pay', rejected the claim of the petitioner, for seeking promotion w.e.f. 26.05.2011 or 23.09.2011, by ignoring the fact that the similarly situated employees, who were junior to the petitioner have already been promoted vide order dated 26.05.2011 and 23.09.2011 (Annexures P-12 and P-13). Even, in the written statement, there is no denial to the said fact. A perusal of pleadings would show that the stand taken by the respondent for denial of petitioner's claim by applying the principle of 'no work, no pay' is not sustainable and cannot be accepted and attracted to the facts of the present case where the respondents were at fault in not considering the case of petitioner for promotion and not allowing him to work on the promotion post. Though vide impugned order dated 21.04.2016, petitioner was promoted, but this Court cannot lose sight of the aspect that in spite of several representations and recommendations since 2011, the respondents did not pay any heed to the request of petitioner. Surprisingly, the respondents are not in a position to state before this Court that under what circumstances the option was not given to the petitioner, except by

referring to the plea that it is the petitioner, who gave its option only on 05.02.2016, hence the petitioner's case was not considered for promotion. Such a plea raised by respondent is not tenable, which has been advanced on the principle of 'no work, no pay' with a stand that since petitioner has not actually worked on the promotional post of Assistant Lineman during the aforesaid period, so no injustice has been caused to him. This Court is of the view that actually respondents came in action only after issuance of direction issued in CWP No.26885-2015 and before that no such promptness was shown by the respondents for completing formalities, rather it is the respondent/Department which acted just to escape from any adverse result and thereafter promoted the petitioner by taking an excuse of giving option on 05.02.2016.

7. The Hon'ble Apex Court in case Civil Appeal No.811 of 2007, decided on 31.7.2015, titled as **Ramesh Kumar vs. Union of India & Ors.**, dealt with the similar issue and relevant paragraph is extracted below:-

“12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In State of Kerala & Ors. vs. E.K. Bhaskaran Pillai, (2007) (2) S.C.T. 757: (2007) 6 SCC 524, this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

“... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to

grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

13. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.

14. The impugned orders passed by the High Court are set aside and this appeal is allowed. The respondents shall release the arrears of pay and allowances to the appellant for the period from 01.08.1997 till the date of his actual promotion that is 13.11.2000 in the promotional post of Naib Subedar within eight weeks from today. No order as to costs.”

8. The Hon’ble Allahabad High Court in Writ-A No.20430 of 2019, titled as **Union of India and others vs. Central Administrative Tribunal Bench at Allahabad and another**, decided on 16.12.2019, it has been held as under:-

*14. In Food Corporation of India Vs. S.N. Nagarkar AIR 2002 SC 808, notional promotion without arrears was allowed by employer relying on judgment of Apex Court in **O.P. Gupta***

(supra) and Paluru Ramkrishnajah (supra). Apex Court found that notional promotion was allowed pursuant to order dated 6.5.1994 passed by High Court in Writ Petition No. 4983 of 1993 wherein a direction was also issued for payment of arrears of pay. The said judgment having attained finality it was not open to deny arrears of salary while implementing said judgment and to defend such denial in execution proceedings. Moreover, it was held that entitlement of employee for arrears of pay and allowances is within the domain of court and if it is satisfied that employee was not considered for promotion to the promotional post for no fault of him but on account of fault of authorities concerned, it can always allow arrears of pay and allowances, since it is settled law that in exercise of writ jurisdiction the Court can mould relief having reference to the facts of the case and interest of justice.

15. In A.K. Soumini v. State Bank of Travancore and Anr. 2003(7) SCC 238= AIR 2003 SC 3137, Court upheld denial of arrears on the ground that as a matter of fact, employee was disentitled for promotion under the promotion policy but taking into account pendency of appeal before the Court for a considerable time on account whereof employee could not appear in subsequent tests, benefit of promotion was allowed, which was more in the nature of gesture of gratis and not by way of any right to which she was entitled. Therefore, notional promotion allowed by the Bank with revision of pay scale was found to be more than what ought to have been allowed to her, be it either in law or equity, and her further claim for payment of arrears was found to be highly far-fetched, without any basis and unjust. This is apparent from para 9 of the judgment, which is reproduced as under:

"So far as the case on hand is concerned, the appellant was denied promotion in terms of the promotion policy under which it was necessary for a candidate to secure at least a minimum eligibility mark of 6 1/2 at the interview and the learned single Judge, allowed the claim only on the ground that such prescription of a minimum mark was not valid. Though the Division Bench also affirmed the same, this Court overruled the said decision, and upheld such prescription. But taking into account the pendency of the appeal in this Court for considerable time, and on account of which the appellant also did not appear in the subsequent tests, benefit to promote her was not denied. The fact that her non promotion was legal and there has been no unlawful interference with her right to promotion or to serve in the promoted category was obvious and could not be minced over or completely ignored in the light of the judgment of this Court, allowing the appeal by the Bank. While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings

before Court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to. Consequently, the notional promotion given to her by the Bank with suitable revision of her pay scales itself is more than sufficient to meet the requirements, be it either in law or in equity. The further claim for payment of arrears as well, is farfetched and can have no basis, in law. The Division Bench, in our view properly approached the question in the light of the relevant guiding principles and the same could not be said to be either arbitrary, unreasonable or unsound in law to warrant of our interference."

16. In Punjab National Bank v. Virender Kumar Goel, AIR 2004 SC 3988, employees were denied work despite withdrawal of their options seeking voluntary retirement. It was held to be illegal on the ground that before acceptance, it is always open to the employee to withdraw such option and therefore, for the period the employees could not work, arrears was allowed. Apex Court held that principle of "no work, no pay" would not apply in such a case since employees were out of their job for no fault of their. It also held that a party, who is in breach of contract, can hardly seek for any equitable relief. Since the Bank did not permit employees to work and breached contract, it did not lie in its mouth to deny arrears of salary to the employees.

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35. Recently also similar issue has been considered in Deepali Gundu Surwase Vs Kranti Junior Adhyapak Mahavidyala (D.Ed.) and others, (2013) 10 SCC 324. Therein Court has observed:

"the very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. The family may have to borrow from relatives etc. to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded

by a finding of competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires, relevant statutory provisions or principles of natural justice, entitles the employee to claim full back wages. If employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

36. The aforesaid view has been referred and followed more recently in **Raj Kumar Vs Director of Education and others, 2016(6) SCC 541**.

37. Learned counsel for petitioner submitted that backwages is not automatic and it depends upon facts and circumstances of each case and he has relied on judgment in **Union of India Vs. K. V. Jankiraman(supra)**.

38. But therein Supreme Court has categorically stated that benefit of arrears may not flow automatically but will depend upon the circumstances of each case. In aforesaid authority it has been explained that reason of denial of promotion or alleged termination etc, if fault is attributable to the employer, employee will not suffer. Moreover, an employee cannot be compelled to suffer for something which is not attributable to him and at the same time Employer cannot be allowed to take advantage of its own wrong.

39. In view thereof, we do not find any illegality or perversity in the judgment passed by Tribunal, which is apparent on the face of record and we also do not find any reason warranting interference in the impugned judgment and order. Writ petition lacks merit."

9. The Hon'ble Supreme Court in a case Civil Appeal no.1575-1576 of 2022, decided on 23.2.2022, titled as **Gowramma C (Dead) By Lrs. vs. Manager (Personnel) Hindustan Aeronautical Ltd. & Anr.**,

"12. The most important question is whether the employee is at fault in any manner. If the employee is not at all at fault and she was kept out of work by reasons of the decision taken by the employer, then to deny the fruits of her being vindicated at the end

of the day would be unfair to the employee. In such circumstances, no doubt, the question relating to alternative employment that the employee may have resorted to, becomes relevant. There is also the aspect of discretion which is exercised by the Court keeping in view the facts of each case. As we have already noticed, this is a case where apart from the charge of the employee having produced false caste certificate, there is no other charge. Therefore, we would think that interests of justice, in the facts of this, would be subserved, if we enhance the back wages from 50% to 75% of the full back wages, which she was otherwise entitled. The appeals are partly allowed. The impugned judgments will stand modified and the respondents shall calculate the amount which would be equivalent to 75% of the back wages and disburse the amount remaining to be paid under this judgment within a period of six weeks from today to the additional appellants.”

10. In this case, the respondent corporation was at fault in not considering the claim of the petitioner where the respondents misread and misconstrued, the non-consent of other employee with similar initials in case of petitioner as his non-consent for foregoing his claim to promotion. Accordingly, the respondent is responsible when petitioner was kept out of work by reasons of it's own wrong decision. Under such circumstances, the petitioner cannot be deprived for no fault of his and is entitled for promotion from the date when his juniors were promoted along with arrears. Moreover, there is nothing on record to show that petitioner has been superannuated during the pendency of this petition. Neither this fact has been disclosed by the petitioner nor by the respondent-Department.

11. In light of above discussion, the impugned order dated 21.04.2016 is hereby quashed and this petition is allowed and petitioner is ordered to be promoted w.e.f. the date when his juniors were promoted. Consequently, respondents are directed to release the arrears of pay and allowances to the petitioner, for the period from the date, of his backdate promotion till the date of his actual promotion i.e. 14.03.2016 within eight weeks from the receipt of

certified copy of this order.

12. Petition is allowed.
13. Since the main case has been allowed, pending application(s), if
any have been rendered infructuous.

(DEEPAK MANCHANDA)
JUDGE

05.09.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No